

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

BRADLEY MOREHOUSE, ET AL.,)	CIVIL NO. 22-00011 DKW-WRP
)	
Plaintiffs,)	FINDINGS AND
)	RECOMMENDATION TO DENY
vs.)	WITHOUT PREJUDICE AS
)	PREMATURE DEFENDANTS AT
COUNTY OF HAWAII, ET AL.,)	ML LEASEHOLD HI, LLC AND
)	MITCH GREEN'S MOTION FOR
Defendants.)	ATTORNEYS' FEES AND COSTS
)	
)	

**FINDINGS AND RECOMMENDATION TO DENY WITHOUT PREJUDICE
AS PREMATURE DEFENDANTS AT ML LEASEHOLD HI, LLC AND
MITCH GREEN'S MOTION FOR ATTORNEYS' FEES AND COSTS**

Before the Court is Defendants AT ML Leasehold HI, LLC and Mitch Green's Motion for Attorneys' Fees and Costs filed on December 30, 2022 (Motion). See Defs.' Mot., ECF No. 81. After careful consideration of the Motion, the record in this action, and the relevant legal authority, the Court FINDS AND RECOMMENDS that the Motion be DENIED WITHOUT PREJUDICE as premature.¹

¹ Within fourteen days after a party is served with the Findings and Recommendation, pursuant to 28 U.S.C. § 636(b)(1), a party may file written objections in the United States District Court. A party must file any objections within the fourteen-day period to preserve appellate review of the Findings and Recommendation.

DISCUSSION

In their First Amended Complaint, Plaintiffs allege that following a dispute related to a lease for commercial property, Defendants conspired to have Plaintiff Bradley Morehouse arrested on false charges. See First Am. Compl., ECF No. 39. Plaintiffs asserted claims against Defendants for violations of 42 U.S.C. § 1983, assault and battery, false arrest, false imprisonment, negligent training and supervision, negligence, and breach of commercial contract. See id.

Defendants AT ML Leasehold HI, LLC and Mitch Green filed a motion to dismiss Plaintiffs' claims for negligence and breach of commercial contract. See Mot. to Dismiss, ECF No. 50. Because Plaintiffs did not file an opposition to that motion before the deadline, the Court directed the parties to submit a stipulation to dismiss Plaintiffs' claims for negligence and breach of commercial contract. See EO dated Nov. 11, 2022, ECF No. 65. Additionally, the Court stated that “[a]ny request for attorneys' fees and costs related to this motion may be submitted to the assigned Magistrate Judge, consistent with LR54.2.” See id. The Court approved the parties' stipulation and ordered dismissal with prejudice of Plaintiffs' claims for negligence and breach of commercial contract. See Stip., ECF No. 69. As noted in that Stipulation and Order, the remaining claims in Plaintiffs' First Amended Complaint remain viable for litigation. See id.

Defendants AT ML Leasehold HI, LLC and Mitch Green filed the

present Motion on December 30, 2022, seeking an award of attorneys' fees related to the two claims that have been dismissed. See Mot., ECF No. 81.

DISCUSSION

Federal Rule of Civil Procedure 54(d)(2)(B) provides that a motion for attorneys' fees must be filed no later than 14 days after the entry of judgment unless a court order provides otherwise. See Fed. R. Civ. P. 54(d)(2)(B). Under Local Rule 54.2(b), a motion for fees must be filed within forty-nine days after the entry of judgment unless otherwise ordered by the Court. See LR54.2(b). Here, although Plaintiffs' claims for negligence and breach of commercial contract have been dismissed, Plaintiffs' claims for violations of 42 U.S.C. § 1983, assault and battery, false arrest, false imprisonment, and negligent training and supervision remain pending. No final judgment has been entered.

This Court fully appreciates that the district court instructed that “[a]ny request for attorneys' fees and costs related to this motion may be submitted to the assigned Magistrate Judge, consistent with LR54.2.” See EO dated Nov. 11, 2022, ECF No. 65. It was therefore proper for Defendants to seek attorneys' fees based on the unopposed motion for partial dismissal “before … the entry of judgment” pursuant to Local Rule 54.2. However, consistent with the Federal Rules and to avoid piecemeal fee determinations, the Court finds that the Motion is premature and recommends that the district court reserve ruling on any such

application for fees until the remainder of this action is resolved. See, e.g., Zaki v. Banner Pediatric Specialists LLC, 2017 WL 11508133, at *4 (D. Ariz. Apr. 13, 2017) (rejecting the defendant's interpretation of the rules to require a motion for attorneys' fees to be filed 14 days after obtaining partial dismissal of the complaint and directing that such motion may be filed after entry of final judgment); Kolodrivskiy v. Wachovia Bank, Mortg., 2011 WL 4101223, at *1 (E.D. Cal. Sept. 13, 2011) (holding that defendant's motion for attorneys' fees was premature following dismissal of some, but not all, claims in the action); RD Legal Funding, LLC v. Erwin & Balingit, LLP, 2010 WL 1416968, at *1-2 (S.D. Cal. Apr. 8, 2010) (denying motion to enter partial final judgment and award attorneys' fees when claims against another defendant remained pending); Camellia Park Homeowners Assoc. v. Greenbriar Homes Co., 882 F. Supp. 150, 150-51 (N.D. Cal. 1995) (denying motion for attorneys' fees as premature after summary judgment was entered as to certain claims when other claims remained). The Court recommends that Defendants AT ML Leasehold HI, LLC and Mitch Green be given leave to renew their Motion after final judgment has been entered in this action.

CONCLUSION

The Court FINDS AND RECOMMENDS that the district court DENY WITHOUT PREJUDICE as premature Defendants AT ML Leasehold HI,

LLC and Mitch Green's Motion for Attorneys' Fees and Costs.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, JANUARY 6, 2023.



A handwritten signature in black ink, appearing to read "Wes Reber Porter".

Wes Reber Porter
United States Magistrate Judge

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